

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:99CR12-08

UNITED STATES OF AMERICA)
)
)
v.) ORDER
)
)
SHAWN AUTALEON POSTON,)
)
Defendant.)
)
_____)

THIS MATTER is before the court on Defendant's Motion for Reconsideration (Document #510), filed May 6, 2009. In this motion, the Defendant asks the court to amend its Order (Document #506), filed April 17, 2009, granting Defendant's Motion to Reduce Sentence pursuant to 18 U.S.C. 3582(c)(2) and Amendment 706 to the Sentencing Guidelines. Defendant argues that the court should grant a further reduction in his sentence because his criminal history points were incorrectly calculated in the original Presentence Investigation Report. In the alternative, Defendant asks the court to treat the motion as a Notice of Appeal.

Fatal to Defendant's argument, "proceedings under § 3582(c)(2) do not constitute a full resentencing of the defendant." United States v. Dunphy, 551 F.3d 247, 251 (4th Cir. 2009). As such, § 3582(c)(2) only allows for reduction of a sentence by the amount specified in the amendment. The district court does not have the authority to conduct a complete reevaluation of the original sentence. Id. at 252. For this reason, the court does not have the power to consider Defendant's argument at this time. Any objections to the original Presentence Investigation Report should have been raised before the original sentencing or on appeal.

WHEREFORE, for the foregoing reasons, Defendant's Motion for Reconsideration is **DENIED**. The clerk is directed to treat the motion as a notice of appeal.

Signed: May 8, 2009



Richard L. Voorhees
United States District Judge

